

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN THE MATTER OF THE COMPLAINT
OF TRADEWINDS TOWING, LLC, AS
ALLEGED OPERATOR, AND
MAGAZINE TUG, LLC, AS OWNER, OF
THE VESSEL REBEKAH, OFFICIAL
NUMBER 623866, AND HER ENGINES,
MACHINERY, GEAR, TACKLE,
APPAREL AND ALL OTHER
APPURTENCES, PETITIONING FOR
EXONERATION FROM AND/OR
LIMITATION OF LIABILITY

IN ADMIRALTY

NO. 2:24-cv-00246

COMPLAINT FOR EXONERATION FROM AND/OR LIMITATION OF LIABILITY

COME NOW, through undersigned counsel, Tradewinds Towing, LLC and Magazine Tug, LLC (collectively “Limitation Petitioners”), as alleged operator and owner of the M/V REBEKAH, her engines, tackle, gear, furniture, appurtenances, etc. (hereinafter “the Vessel”), who files this Complaint for Exoneration From or Limitation of Liability pursuant to 46 U.S.C. § 30511, and respectfully aver upon information and belief as follows:

1. This is an action for exoneration from or limitation of liability, civil and maritime, under the purview of 46 U.S.C. §§ 30501, *et seq.* (the "Limitation Act"), and an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. This

**COMPLAINT FOR EXONERATION
FROM AND/OR LIMITATION OF
LIABILITY - 1**
CASE NO. 2:24-CV-00246

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1 action is governed by Rule F of the Supplemental Rules for Admiralty or Maritime Claims of the
2 Federal Rules of Civil Procedure. This Honorable Court has jurisdiction over this action by virtue
3 of the Limitation Act and by virtue of 28 U.S.C. § 1333.

4 2. The Vessel has not been attached or arrested to answer for any claim with respect
5 to which Limitation Petitioners seek exoneration from or limitation of liability through these
6 proceedings. As of the date of this filing, Limitation Petitioner Tradewinds Towing, LLC has
7 been sued by Stephen Dufrene ("Dufrene") for personal injuries under the Jones Act (46 U.S.C.
8 § 30104) in the Superior Court of the State of Washington in and for the County of King, bearing
9 Case No. 23-2-16972-7, styled *Stephen Dufrene v. Foss Maritime Company and Tradewinds*
10 *Towing Company*. Venue is therefore proper in the United States District Court for the Western
11 District of Washington, pursuant to Rule F(9) of the Supplemental Rules for Certain Admiralty
12 and Maritime Claims.

13 3. At all times pertinent hereto, Limitation Petitioner, Tradewinds Towing, LLC is a
14 Louisiana company with its principal place of business in New Orleans, Louisiana. At all material
15 times, Tradewinds Towing, LLC was Dufrene's employer. Foss Maritime Company, LLC and
16 Foss Offshore Wind Holdings, LLC (potential claimants identified below) have alleged that
17 Tradewinds, Towing, LLC was the operator of the Vessel. To the extent that Tradewinds Towing,
18 LLC is found to be the operator of the Vessel, it is entitled to limit its liability "as owner" pursuant
19 to 46 U.S.C. §§ 30501, *et seq.* (the "Limitation Act").

20 4. At all times pertinent hereto, Limitation Petitioner, Magazine Tug, LLC is a
21 Louisiana company with its principal place of business in New Orleans, Louisiana. On the day of
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1 Dufrene's alleged accident, Magazine Tug, LLC was the owner of the Vessel. Magazine Tug,
2 LLC is entitled to limit its liability "as owner" pursuant to 46 U.S.C. §§ 30501, *et seq.* (the
3 "Limitation Act").

4 5. The M/V REBEKAH, Official No. 623866, is a U.S.-flagged towing vessel
5 measuring seventy-three (73) total feet in length, twenty-six (26) feet in width, and eleven (11)
6 feet in depth. The Vessel was built in 1980. The Vessel primarily operates as an offshore tug.
7

8 6. At all times when they were responsible for doing so, Limitation Petitioners
9 exercised due diligence to make the Vessel seaworthy in all respects. At all times hereinafter
10 described, the Vessel was, in fact, tight, staunch, strong, fully and properly equipped and manned,
11 well and sufficiently fitted with suitable machinery, gear, tackle, apparel, and appliances, and in
12 all respects seaworthy and fit and proper for the service in which the Vessel was engaged.

13 7. On May 1, 2023, Magazine Tug, LLC and Foss Offshore Wind Holdings, LLC
14 executed a Bareboat Charter of the Vessel. On information and belief, Foss Offshore Wind
15 Holdings, LLC entered into a Sub-Bareboat Charter of the Vessel with Foss Maritime Company,
16 LLC.
17

18 8. On May 5, 2023, Dufrene was working aboard the Vessel when he allegedly
19 sustained injuries to his left foot and ankle while the Vessel was under charter and sub-charter by
20 Foss Offshore Wind Holdings, LLC and Foss Maritime Company, LLC, respectively ("Incident").
21 Dufrene is at fault for the Incident for the following reasons, including but not limited to:
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- 23 a) Dufrene's own negligence, fault, assumption of the risk, and/or failure to mitigate;
24 b) Failure to follow applicable safety rules and protocols;

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- c) Failure to use due care under the circumstances; and
 - d) Any other acts of negligence or fault that will be proven at trial.

9. Limitation Petitioners were in no way negligent or at fault for the Incident. The Incident was likewise not caused by the alleged unseaworthiness of the Vessel.

10. This Complaint is filed timely under Admiralty Rule F(1), because it was filed within six months from the date Limitation Petitioners received written notice of a claim on August 22, 2023 when Dufrene filed his lawsuit styled *Stephen Dufrene v. Foss Maritime Company and Tradewinds Towing Company*, Cause No. 23-2-16972-7, in the Superior Court of the State of Washington in and for the County of King.

11. The aforementioned Incident, and any losses, and/or damages allegedly resulting therefrom, were not caused or contributed to by any fault, neglect, negligence, or lack of due care on the part of Limitations Petitioners, their respective agents, servants, employees, or any other persons for whom Limitation Petitioners might be responsible, or by any unseaworthiness of the Vessel.

12. Besides the aforementioned suit, Limitation Petitioners are, as of this date, unaware of any other demands, suits, petitions, unsatisfied claims of liens, or liens filed against Limitation Petitioners or the Vessel in connection with the Incident made the subject of this Complaint.

13. Limitation Petitioners are entitled to exoneration and/or limitation under the circumstances.

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1 14. The Incident, any physical damage, injuries, contingent losses as well as all other
2 losses, damages, expenses, and costs resulting therefrom were caused and occurred without the
3 privity or knowledge of Limitation Petitioners.

4 15. Limitation Petitioners have a reasonable basis upon which to believe it is possible
5 that claims have been and/or will be asserted and prosecuted against them in amounts exceeding
6 the value of the Vessel and her pending freight. Specifically, as noted above, the lawsuit brought
7 by Dufrene has been filed in connection with the Incident and Foss Offshore Wind Holdings,
8 LLC and Foss Maritime Company, LLC have sought exoneration from and/or limitation of
9 liability in this Court. Foss Offshore Wind Holdings, LLC and Foss Maritime Company, LLC
10 will likely make claims against Limitation Petitioners for contractual and tort indemnity along
11 with claims for contribution.

13 16. Limitation Petitioners aver that the following persons and entities are the known
14 potential claimants in this Limitation Action:

16
17 a) Stephen Dufrene
18 c/o Brian Beckom *Pro Hac Vice*
19 Brendan Fradkin *Pro Hac Vice*
20 VB Attorneys
21 6363 Woodway, Suite 400
22 Houston, Texas 77057
23 713-224-7800

24
25 b) Foss Offshore Wind Holdings, LLC
26 c/o Raymond T. Waid
26 Elizabeth A. Strunk
27 701 Poydras Street, Suite 5000
28 New Orleans, Louisiana 70139
29 (504) 556-4042 Telephone

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c) Foss Maritime Company, LLC
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New Orleans, Louisiana 70139
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(504) 556-4108 Facsimile

17. The fair market value of the Limitation Petitioner's interest in the REBEKAH at the time of the incident was TWO MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO/100 (\$2,500,000.00) U.S. DOLLARS total, and she had no pending freight. Accordingly, the total value of Limitation Petitioners' interest in the REBEKAH, and her pending freight is \$2,500,000.00. Limitation Petitioners hereby adopt the Declaration of Value submitted by Foss Offshore Wind Holdings, LLC and Foss Maritime Company, LLC for the M/V REBKEAH in a related Limitation Action regarding the same Incident which is pending before this Honorable Court as Case No. 2:24-cv-00237. (See Declaration of Value attached hereto as **Exhibit 1**).

18. Limitation Petitioners aver that because the aforementioned Incident and the alleged losses, damages and/or injuries allegedly related thereto were not caused or contributed to by any fault, neglect, negligence or lack of due care on the part of Limitation Petitioners or their respective agents, servants, employees, or any other persons for whom Limitation Petitioners might be responsible, or by any unseaworthiness of the Vessel, Limitation Petitioners are entitled to and hereby claims exoneration from liability for any and all alleged injuries, losses or damages allegedly occurring as a result of the Incident, as well as any and all claims related to the Incident

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1 that have yet to be asserted. Limitation Petitioners aver that they have valid and complete
2 defenses on the facts and on the law.

3 19. Although Limitation Petitioners deny any liability to any party, and although
4 Limitation Petitioners do not know the extent, nature or total amount of all claims which may be
5 made for loss or damage arising out of the Incident described above, Limitation Petitioners
6 anticipate and believe that suits and claims will be asserted and prosecuted against Limitation
7 Petitioners in amounts exceeding the value of the Vessel at the conclusion of the voyage during
8 which the aforementioned Incident took place.

9 20. As such, without admitting but affirmatively denying all liability, and strictly in
10 the alternative to its claim for exoneration from all liability, losses, damages and/or injuries
11 allegedly occasioned by or resulting from the aforesaid Incident, or allegedly done, occasioned,
12 or incurred on the subject voyage, Limitation Petitioners allege and aver that if Limitation
13 Petitioners should be held responsible to any person, entity or other party by reason of any fault
14 attributed to Limitation Petitioners, their respective agents, servants, employees, or others for
15 whom Limitation Petitioners could be held responsible, or to the Vessel, in connection with the
16 above-described Incident, then Limitation Petitioners are entitled to and claims the benefit of
17 limitation of liability as provided in the Limitation of Liability Act, 46 U.S.C. §§ 30501, *et seq.*,
18 and all laws supplementary thereto and amendatory thereof, and all other applicable law and
19 jurisprudence, to limit their liability to TWO MILLION FIVE HUNDRED THOUSAND
20 DOLLARS AND NO/100 (\$2,500,000.00) U.S. DOLLARS, the value of Limitation Petitioners'
21 interest in the Vessel immediately before and after the Incident.

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1 21. Should it later appear that Limitation Petitioners are or may be liable and that the
2 amount or value of their interest in the Vessel and her pending freight, as aforesaid, is not
3 sufficient to pay all losses in full, then all claimants shall be made to share *pro rata* in the aforesaid
4 sum, saving to all such claimants any rights of priority they may have as ordered by this Honorable
5 Court, or as provided by the aforesaid statutes, by the Federal Rules of Civil Procedure, the
6 General Maritime Law, and by the rules and practices of this Honorable Court.
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8 22. Limitation Petitioners reserve the right to plead all applicable affirmative defenses,
9 claims, cross-claims and counterclaims against any claimant, including but not limited to the right
10 to plead set off, the right to plead comparative fault, the right to plead compromise and settlement,
11 the right to plead that the Incident was unavoidable by Limitation Petitioners, the right to plead
12 the Act of God defense, the right to plead that the Incident resulted from violations of law or
13 permits by other parties or particular claimants, the right to plead that the particular claimants
14 have no right to pursue claims for the alleged unseaworthiness of the Vessel, and the right to file
15 cross-claims and/or third-party actions for damages or for indemnity or contribution against all
16 persons and entities that may be legally responsible for the incident described herein.
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18 23. With this Complaint, Limitation Petitioners seek to preserve their right to limit
19 their liability within the six month deadline from written notice as required by Supplemental Rule
20 F(1) of the Supplemental Rules for Admiralty or Maritime Claims. Limitation Petitioners are
21 currently in the process of obtaining security and/or a bond and will deposit the proper security
22 with the Court within thirty (30) days of the filing of this Complaint. It is not a jurisdictional
23 prerequisite to claim the benefits of the Limitation Act that security be posted simultaneously
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1 with the complaint or within six months of notice of a claim. *Guey v. Gulf Insurance Co.*, 46 F.3d
 2 478, 481 (5th Cir. 1995). Pursuant to Supplemental Rule F(1), it is within the full discretion of
 3 the district court to direct Limitation Petitioner when to post security and the amount required. *Id.*
 4 This Complaint is being filed due to the requirement that such actions be filed within six months
 5 of notice of a claim subject to limitation. Once the security is posted, the limitation action may
 6 move forward in typical fashion with the issuance of an injunction and concursus of claims and
 7 notice to claimants with the deadline in which claimants may file against Limitation Petitioners.
 8

9 24. All and singular, the premises are true and correct and within the admiralty and
 10 maritime jurisdiction of the United States and of this Honorable Court as an admiralty and
 11 maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

12 **WHEREFORE, PREMISES CONSIDERED**, Limitation Petitioners, Tradewinds Towing,
 13 LLC and Magazine Tug, LLC, respectfully request and pray:

14 1. That this Honorable Court enter an order approving a temporary dispensation from
 15 security. That Limitation Petitioners shall post the security required by 46 U.S.C. § 30511(b) and
 16 Supplemental Admiralty Rule F(1) within thirty (30) days from filing this action;

18 2. That once the Limitation Petitioners post security, this Honorable Court issue a
 19 monition and notice to all persons, firms, corporations or other entities asserting any claims for
 20 any and all alleged losses, damages or injuries with respect to which Tradewinds Towing, LLC
 21 and Magazine Tug, LLC seek exoneration from or limitation of liability, admonishing them to
 22 file their respective claims with the Clerk of Court and to serve on the attorneys for Tradewinds
 23 Towing, LLC and Magazine Tug, LLC a copy thereof on or before the date specified in the notice,
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1 or be forever barred and permanently enjoined from making and filing any claims with respect to
2 the Incidents described more fully herein;

3 3. That once the Limitation Petitioners post security, this Honorable Court issue an
4 injunction restraining the commencement or prosecution of any action or proceeding of any kind
5 against Tradewinds Towing, LLC and Magazine Tug, LLC, their respective agents, servants,
6 affiliates, their employees, and all of their respective insurers, sureties, or underwriters, or any of
7 their property, including but not limited to the M/V REBEKAH, whether *in personam*, by
8 attachment, or *in rem*, for any losses, damages, and/or injuries allegedly arising out of the Incident
9 described in this Complaint, or allegedly occurring during the subject voyage described in this
10 Complaint;

12 4. That if any claimant who shall have filed a claim shall also file an exception
13 bringing forward evidence to controvert the value of the Vessel, as alleged herein, this Court shall
14 cause due appraisement to be had of the value of the Vessel following the Incident and of the
15 value of Tradewinds Towing, LLC and Magazine Tug, LLC's interest therein, following which
16 event this Court shall, if necessary, enter an Order for filing of an amended Letter of Undertaking
17 or other appropriate security for the aggregate value, as so determined, of Tradewinds Towing,
18 LLC and Magazine Tug, LLC's interest in said Vessel;

20 5. That this Honorable Court adjudge that Tradewinds Towing, LLC and Magazine
21 Tug, LLC, their respective affiliated companies, agents, servants, employees, and all of their
22 respective insurers, sureties, and underwriters, and the M/V REBEKAH, are not liable to any
23 extent whatsoever for any losses, damages and/or injuries or for any claims therefor, in any way
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1 arising from or in consequence of the subject voyage, or in consequence of otherwise connected
2 with the matters and happenings referred to in this Complaint;

3 6. Or, strictly in the alternative, if this Court should adjudge that Tradewinds Towing,
4 LLC and Magazine Tug, LLC, their respective affiliates, agents, servants, employees, or any of
5 their respective insurers, sureties or underwriters, and/or the M/V REBEKAH are liable in any
6 amounts whatsoever, that the Court should then adjudge that said liability shall be limited to TWO
7 MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO/100 (\$2,500,000.00) U.S.
8 DOLLARS, the value of Tradewinds Towing, LLC and Magazine Tug, LLC's interest in the
9 Vessel immediately after the incident, said amount to be divided *pro rata* among all claimants;
10 and that a judgment be entered discharging Tradewinds Towing, LLC and Magazine Tug, LLC,
11 their respective affiliates, agents, servants, employees and all of their respective insurers, sureties
12 and underwriters, and the M/V REBEKAH of and from any and all further liability and forever
13 enjoining and prohibiting the filing and prosecution of any claims against Tradewinds Towing,
14 LLC and Magazine Tug, LLC, their respective affiliates, agents, servants, employees and all of
15 their respective insurers, sureties and underwriters, or any of their property, including the M/V
16 REBEKAH, in any way arising from or in consequence of the subject Incident, or in consequence
17 of or in connection with the matters and happenings referred to in this Complaint; and

20 7. That Tradewinds Towing, LLC and Magazine Tug, LLC have such other and
21 further relief as in law and justice they may be entitled to receive.

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1
2 Respectfully submitted this 22nd day of February, 2024.
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6 THOMSEN, LLP
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9 By: s/ Michelle Buhler
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